

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

PAIGE ANN ARCURI,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, a corporation;  
FARMERS INSURANCE EXCHANGE, a  
corporation; MID-CENTURY INSURANCE  
COMPANY, a corporation; DOES 1 through  
10, inclusive, and ROE CORPORATIONS 1  
through 10, inclusive,

Defendants.

Case No.: 2:13-cv-00416-GMN-NJK

**ORDER**

Pending before the Court is the Motion to Remand to State Court (ECF No. 7) filed by Plaintiff Paige Ann Arcuri. Defendant State Farm Mutual Automobile Insurance Company (“Defendant”) filed a Response on April 1, 2013. (ECF No. 10.) Plaintiff did not file a Reply and the deadline to file a Reply has passed. For the following reasons, the Court GRANTS Plaintiff’s Motion to Remand.

**I. BACKGROUND**

Plaintiff originally filed her complaint in state court alleging that Defendant failed to honor her uninsured/underinsured motorist (“UIM”) policy. (Compl., ECF No. 1-1.). Subsequently, Defendant removed the action to this Court asserting that this Court has original jurisdiction under 28 U.S.C. § 1332(a)(1). (Pet. for Removal 2:4-5, ECF No. 1.) Specifically, Defendant asserts that Plaintiff is domiciled in Nevada and that Defendant is domiciled in Illinois. (*Id.* at 2:11-12.) Defendant further states that “[t]he contractual limits of the policies alone are sufficient to exceed the jurisdictional limit” and “[i]t is clear that Plaintiff is seeking

1 punitive damages in excess of \$75,000.” (Id. at 2:22-27.)

2 On March 18, 2013, Plaintiff filed a Motion to Remand to State Court. (Mot. to Remand,  
3 ECF No. 7.) Plaintiff asserts that Defendant has failed to carry its burden of proving by a  
4 preponderance of the evidence that the amount in controversy exceeds the jurisdictional limit  
5 (Id. at 5:11-13) and “[h]as failed to proffer any evidence to support its contention that the value  
6 of this case exceeds \$75,000.” (Id. at 6:1-2.) Furthermore, Plaintiff asserts “Farmers and/or  
7 Mid-Century has taken the position that Plaintiff’s UIM [uninsured/underinsured motorist]  
8 claim has a value of \$8,301.05, and State Farm has taken the position that Plaintiff’s UIM claim  
9 has a zero value after taking into consideration the \$15,000 offset already received.” (Id. at  
10 3:16-18.)

## 11 **II. LEGAL STANDARD**

12 Federal Courts are courts of limited jurisdiction, possessing only those powers granted  
13 by the Constitution and by statute. *See United States v. Marks*, 530 F.3d 799, 810 (9th Cir.  
14 2008). For this reason, “[i]f at any time before final judgment it appears that the district court  
15 lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

16 A defendant may remove an action to federal court only if the district court has original  
17 jurisdiction over the matter. 28 U.S.C. § 1441(a). “Removal statutes are to be ‘strictly  
18 construed’ against removal jurisdiction.” *Nevada v. Bank of America Corp.*, 672 F.3d 661, 667  
19 (9th Cir. 2012) (quoting *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002)). The  
20 party asserting federal jurisdiction bears the burden of overcoming the presumption against  
21 federal jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).  
22 Specifically, federal courts must reject federal jurisdiction “[i]f there is any doubt as to the right  
23 of removal in the first instance.” *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992); *see also*  
24 *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (per curiam)  
25 (noting that “[w]here it is not facially evident from the complaint that more than \$75,000 is in

1 controversy, the removing party must prove, by a preponderance of the evidence, that the  
2 amount in controversy meets the jurisdictional threshold”).

3 District courts have subject matter jurisdiction in two instances. First, district courts  
4 have subject matter jurisdiction over civil actions that arise under federal law. 28 U.S.C.  
5 § 1331. Second, district courts have subject matter jurisdiction over civil actions where no  
6 plaintiff is a citizen of the same state as a defendant and the amount in controversy exceeds  
7 \$75,000. 28 U.S.C. § 1332(a).

### 8 **III. DISCUSSION**

9 In this case, Defendant based its removal of this action solely on diversity of citizenship  
10 pursuant to 28 U.S.C. § 1332(a). However, Defendant has failed to carry its burden of  
11 establishing that this Court has subject matter jurisdiction over this case. Neither party disputes  
12 that the complete diversity requirement is satisfied. However, Defendant failed to show, by a  
13 preponderance of the evidence, that the amount in controversy exceeds \$75,000.

14 In response to Plaintiff’s Motion, Defendant asserts that the amount in controversy is  
15 met by the fact that “Ms. Arcuri demanded settlement in the sum of \$50,000.00 from Mid-  
16 Century Insurance prior to litigation, and also demanded settlement in the sum of \$25,000.00  
17 from State Farm, as well as \$2,000.00 in medical payments coverage under the alleged  
18 applicable terms for such coverage.” (Resp. to Mot. to Remand, ECF No. 10 at 6:8-11.)  
19 However, these demands are not present on the face of the complaint. In the complaint,  
20 Plaintiff seeks general damages in excess of \$10,000.00, special damages, punitive damages in  
21 excess of \$10,000.00, and attorney’s fees. (Compl., ECF No. 1-1 at 10:4-8.) Defendant also  
22 references the Plaintiff’s demand for punitive damages as an additional factor to take into  
23 consideration.

24 In line with the presumption against removal jurisdiction, the Ninth Circuit has held that  
25 a bare assertion of the amount in controversy, devoid of any indication from the face of the

1 complaint, is not enough to establish federal jurisdiction. *See Matheson*, 319 F.3d at 1091. In  
2 *Matheson*, the complaint sought “in excess of \$10,000 for economic loss, ‘in excess’ of  
3 \$10,000 for emotional distress, and ‘in excess’ of \$10,000 for punitive damages.” *Id.* However,  
4 the complaint did not specify how much “in excess” the plaintiff was seeking. *Id.* Accordingly,  
5 the court held that this assertion alone was insufficient to find that the defendant “made the  
6 required showing of the amount in controversy.” *Id.*

7 Here, the request for relief contained in the Plaintiff’s complaint closely mirrors that  
8 found in *Matheson*. *Id.* In *Matheson*, the Plaintiff asked for at least \$30,000.00, well below the  
9 jurisdictional amount. *Id.* The Plaintiff here seeks at least \$20,000.00, even farther below the  
10 jurisdictional minimum. Therefore, it is doubtful that removal was appropriate in the first  
11 instance.

12 Defendant also attempted to carry its burden by alleging that “Plaintiff’s counsel refused  
13 to stipulate that the value of the case did not exceed \$75,000.” (Resp. to Mot. to Remand, ECF  
14 No. 10 at 6:13-14.) This argument is also unpersuasive. Defendant fails to provide any legal  
15 authority that permits such a conclusion from a failure to so stipulate. In fact, many district  
16 courts within this circuit have declined to consider a refusal to stipulate to damages below the  
17 jurisdictional amount when determining whether the amount in controversy requirement is met.  
18 *See, e.g., Soriano v. USAA Ins. Agency, Inc.*, No. 3:09-cv-00661-RCJ-RAM, 2010 WL 2609045  
19 (D. Nev. June 24, 2010); *Conrad Assocs. v. Hartford Acc. & Indem. Co.*, 994 F. Supp. 1196,  
20 1199 (N.D. Cal. 1998).

21 For the reasons discussed above, Defendant has failed to carry its burden of proving by a  
22 preponderance of the evidence that the amount in controversy exceeds \$75,000. Accordingly,  
23 this Court lacks subject matter jurisdiction under 28 U.S.C. § 1332 and the case must be  
24 remanded to state court.  
25

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that the Motion to Remand is **GRANTED** and this case is  
3 hereby remanded to the Eighth Judicial District Court. The Clerk of the Court shall remand this  
4 case back to state court and thereafter close this court's case.

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6 **DATED** this 16th day of October, 2013.

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12 Gloria M. Navarro  
13 United States District Judge  
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